

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Order No. R1-2006-0077

Mandatory Minimum Penalties

For

Violation of NPDES Monitoring and Reporting Requirements  
Waste Discharge Requirements Order No. R1-2000-0092b  
NPDES No. CA0022721

In the Matter of

City of Ferndale Wastewater Treatment Facility  
WDID No. 1B83136OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), having received from the City of Ferndale (hereinafter Discharger) a waiver of the right to a hearing in the matter of mandatory minimum penalties pursuant to Water Code sections 13385, subdivision (h) and 13385.1 for failure to submit a total of twelve discharger monitoring reports in a timely manner as required by Order No. R1-2000-0092b (NPDES No. CA0022721) and the associated monitoring and reporting program, and having received Discharger's request for the opportunity to implement a Supplemental Environmental Project (SEP) in lieu of a portion of the penalty prescribed, finds the following:

1. The Discharger owns and operates the City of Ferndale's wastewater treatment facility (hereinafter facility) located at Port Kenyon Road in Ferndale, California. The Discharger discharges up to 3.7 million gallons per day (mgd) of wastewater during winter periods (October through April) to Francis Creek at its confluence with the Salt River, a tributary of the Eel River (Latitude 40°35'40", Longitude 124°15'44"). The water is susceptible to containing pollutants that can degrade water quality and impact beneficial uses of water, and which are defined as pollutants under the federal Clean Water Act. The pollutants are discharged from the facility into Francis Creek, thence into the Salt River, thence into the Eel River, navigable waters of the United States.
2. On November 29, 2000, the Regional Water Board adopted Order No. R1-2000-0092b, which prescribes waste discharge requirements and serves as an NPDES permit (NPDES No. CA0022721) for the discharge of treated wastes from the facility into Francis Creek.
3. Among the provisions in the Discharger's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit NPDES self-monitoring reports to the Regional Water Board pursuant to Water Code section 13383.

4. The Regional Water Board received the Discharger's monthly reports as follows:

Report Type	Due Date	Received	Total days late
Monthly	Sept. 15, 2004	4/14/05	211 days
Monthly	Nov. 15, 2004	4/14/05	150 days
Monthly	Dec. 15, 2004	4/14/05	120 days
Monthly	Jan. 15, 2005	4/14/05	89 days
Monthly	Feb. 15, 2005	4/12/05	56 days
Monthly	June 15, 2005	1/3/06	202 days
Monthly	July 15, 2005	1/3/06	172 days
Monthly	August 15, 2005	1/3/06	141 days
Monthly	September 15, 2005	1/3/06	110 days
Monthly	October 15, 2005	1/3/06	80 days
Monthly	November 15, 2005	1/3/06	49 days
Monthly	December 15, 2005	3/6/06	81 days

5. Water Code section 13385, subdivision (h) requires that the Regional Water Board assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Water Code section 13385.1, subdivision (a)(1) identifies the failure to timely file a discharge monitoring report required pursuant to Water Code section 13383 for each complete period of 30 days following the deadline for submitting the report as a serious violation.
6. Water Code section 13385, subdivision (l)(1) provides that a portion of the mandatory minimum penalties imposed under Water Code sections 13385, subdivision (h) or 13385.1 may be directed to a supplemental environmental project (SEP) in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
7. On August 29, 2005, and May 12, 2006, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) Nos. R1-2005-0088 and R1-2006-0059, respectively. The mandatory minimum penalties were \$57,000 and \$ 69,000 respectively, for untimely submittal of monitoring reports described in Finding No. 4 above. By signed waivers on February 14, 2006, and June 9, 2006, respectively, the Discharger waived its right to a public hearing and requested to pay the sum of \$48,000 to the State Waste Discharge Permit Fund (WDPF) and spend the remaining sum of \$78,000 on a Supplemental Environmental Project (SEP). The Discharger paid \$21,000 into the CAA on March 3, 2006, and will pay the remaining \$27,000 before September 1, 2006.
8. A SEP was received from the Discharger on May 22, 2006, with the last revision received on June 15, 2006. The Discharger proposes a SEP to restore and open the low-flow channel along Francis Creek between Port Kenyon Road and the confluence with the Salt River at a

cost of \$1,059,500 as described in Attachments A and B incorporated herein. Project completion is October 15, 2007. The proposed SEP and time schedule are attached and are hereby incorporated into this Order. The Humboldt County Resource Conservation District in December 14, 2005, prepared a Draft Biological Assessment Lower Salt River Channel Restoration Project. The SEP is part of this Draft.

9. A duly noticed public hearing on this matter was held before the Regional Water Board during a public meeting on September 19 and 20, 2006, in the Regional Water Board Hearing Room, 5550 Skylane Boulevard, Suite A, Santa Rosa, California. The documents for the agenda item were provided to the Discharger prior to the hearing.
10. At the hearing, the Regional Water Board considered whether to accept, reject, or modify the proposed SEP and any other action appropriate as a result of the hearing.
11. The Regional Water Board finds that the SEP, as proposed, meets the criteria established in the State Water Resources Control Board's Enforcement Policy.
12. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code sections 21000-21277) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
13. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Resources Control Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED pursuant to Water Code section 13385 that:

1. The Discharger shall be assessed the mandatory minimum penalty in the amount of \$126,000. The Discharger has paid the sum of \$21,000 into the WDPF with the remaining \$27,000 to be paid to the WDP before September 19, 2006. The remaining sum of \$78,000 is eligible to be permanently suspended upon satisfactory completion of the SEP as described in Attachments A and B of this Order. The SEP meets the criteria established in the Enforcement Policy and shall be completed on or before October 15, 2007, according to the following time schedule:

Task A: Obtain permits	On or before May 1, 2007. Submit report of completion on or before May 15, 2007
Task B: Grading	Complete grading on or before October 15, 2007. Submit final project report on or before 12/31/2007

2. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed.
3. The remaining penalty amount of \$78,000 shall be permanently suspended if the Executive Officer determines that the Discharger provides the Regional Water Board with the scheduled progress reports toward completion of the SEP and the final report by December 31, 2007.
4. Notwithstanding the issuance of the Order, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's Waste Discharge Requirements.

Certification

I, Catherine E. Kuhlman, Executive Officer,  
do hereby certify that the foregoing is a full,  
true, and correct copy of an Order adopted  
by the California Regional Water Quality  
Control Board, North Coast Region, on  
September 19 and 20, 2006.

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Catherine E. Kuhlman  
Executive Officer